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Sundra Rajoo a/l Nadarajah v Attorney General

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A)-161–03 OF 2019
ABDUL RAHMAN SEBLI, HASNAH HASHIM AND KAMALUDIN MD SAID JJCA
22 AUGUST 2019

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Civil Procedure — Judicial review — Leave to file Judicial review application — Whether High Court should have granted leave in view of important issues raised in Judicial review application — Government agencies sought to prosecute applicant for alleged criminal offences committed while he was Director of Asian International Arbitration Centre ('AIAC') — Applicant claimed Director of AIAC was equal to a diplomat and was immune from criminal or civil prosecution under International Organisations (Privileges and Immunities) Act 1992 — Whether JR application raised not only international law issue of whether diplomatic immunity applied to applicant but also whether attorney general had absolute and unfettered prosecutorial powers under art 145(3) of Federal Constitution — Whether applicant had shown he had a prima facie arguable case which was not frivolous or vexatious

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The appellant was a former director of the Asian International Arbitration Centre ('AIAC') which was located in Malaysia since 1978 pursuant to agreements between the Government of Malaysia and the Asian-African Legal Consultative Committee ('AALCO'). Officers from the Malaysian Anti-Corruption Commission ('the MACC') arrested the appellant on suspicion of committing certain criminal offences. However, an application to remand the appellant pending investigations was refused by the magistrate. The appellant contended that the Director of the AIAC was a 'High Officer' under the International Organisations (Privileges and Immunities) Act 1992 enjoying the same privileges as a 'diplomatic agent' within the meaning of the Diplomatic Privileges (Vienna Convention) Act 1966 and was immune from any legal suit or process in respect of things done in that official capacity. Aware that various relevant agencies of government were attempting to obtain a waiver of his aforesaid immunity, particularly from the Secretary General of the AALCO, in order to charge him in court for various offences, the appellant applied to the High Court for leave to file judicial review proceedings against the Attorney General of Malaysia ('the AG'), the Minister of Foreign Affairs, the MACC and the Malaysian Government ('the respondents') for orders of certiorari and prohibition to: (a) set aside any document purporting to waive his immunity as the former High Officer in the AIAC; (b) prevent the AG from instituting any charge or court proceedings against him with regard to anything

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A he had done as Director of the AIAC; and (c) prevent the MACC from arresting or detaining him or issuing any warrant or other order or from bringing any judicial proceedings against him with regard to anything he had done as Director of the AIAC. The High Court dismissed the leave application on finding that the appellant had not raised a prima facie arguable case for B judicial review and that the leave application was frivolous and vexatious mainly because it sought to review the AG's 'unfettered' prosecutorial discretion under art 145(3) of the Federal Constitution. The High Court ruled that there was no material to show the AG had abused his prosecutorial power or that the decision to charge the appellant contravened any constitutional C protection or rights. In the instant appeal, the appellant contended that the High Court should have allowed his leave application because he had satisfied the low threshold of showing that he had a prima facie arguable case which was not frivolous or vexatious and that he faced the prospect of being unlawfully D prosecuted by the respondents.

Held, unanimously allowing the appeal and setting aside the High Court's decision:

E (1) Quite apart from the question of whether the AG had absolute discretion in matters of criminal prosecution, the other issue that ought to be fully ventilated at a substantive hearing was the question whether the AG as the State Authority was bound in law by the international regime of privileges and immunities which had been incorporated into and were F part of our domestic law. There was an international law dimension to the issues raised by the appellant in his leave application and not just the domestic law question of whether the AG had absolute and unfettered prosecutorial powers under art 145(3) of the Federal Constitution (see paras 22 & 25).

G (2) The appellant's arrest with a view to prosecution was in connection with acts done in his capacity as Director (and High Officer) of the AIAC. The question that needed to be fully ventilated at the substantive hearing was whether, as High Officer, he enjoyed the same privileges as a 'diplomatic agent' within the meaning of the Diplomatic Privileges (Vienna H Convention) Act 1966. The reliefs prayed for were not merely for orders of prohibition but also for an important declaratory relief (see paras 29–30).

I (3) It was settled law that the threshold for obtaining leave in a judicial review application was low. Leave ought to have been granted in the instant case because of the importance of the issues raised in the appellant's application (see paras 30–31).

[Bahasa Malaysia summary

Perayu merupakan bekas pengarah Pusat Timbang Tara Antarabangsa Asia ('AIAC') yang berada di Malaysia sejak 1978 selaras dengan perjanjian di antara kerajaan Malaysia dan Asian African Legal Consultative Committee ('AALCO'). Pegawai dari Suruhanjaya Pencegah Rasuah Malaysia ('SPRM') telah menangkap perayu kerana disyaki telah melakukan beberapa kesalahan jenayah. Namun, satu permohonan reman terhadap perayu sementara siasatan dijalankan telah ditolak oleh majistret. Perayu mengatakan bahawa pengarah AIAC merupakan seorang 'pegawai tinggi' dibawah Akta Organisasi Antarabangsa (Keistimewaan dan Kekebalan) 1992 dan menikmati keistimewaaan yang sama sebagai seorang agen diplomatik sepertimana tertakluk dalam Diplomatic Privileges (Vienna Convention) Act 1966 dan adalah kebal daripada apa-apa guaman atau proses berkenaan dengan perkara yang dilakukan atas kapasiti rasmi beliau. Dengan pengetahuan bahawa agensi kerajaan yang berkaitan berusaha untuk mendapatkan pengetepian kekebalan tersebut, iaitu daripada Setiausaha Agung AALCO, untuk menuduhnya di mahkamah untuk beberapa kesalahan, perayu telah memohon ke mahkamah tinggi untuk izin untuk memfailkan semakan kehakiman terhadap Peguam Negara Malaysia (PNM), Menteri Luar Negeri, SPRM, dan Kerajaan Malaysia (responden-responden) untuk perintah centiorari dan larangan untuk: (a) mengetepikan apa-apa dokumen yang kononnya dikatakan mengetepikan kekebalannya sebagai bekas pegawai tinggi AIAC; (b) untuk menghalang PNM daripada megemukakan apa-apa pertuduhan atau prosiding mahkamah terhadapnya berkenaan dengan apa-apa yang telah dilakukan sebagai pengarah AIAC; dan (c) menghalang SPRM daripada menangkap atau menahannya atau mengeluarkan apa-apa waran. Mahkamah Tinggi mengetepikan permohonan untuk izin dengan dapatan bahawa perayu tidak mempunyai kes prima facie yang boleh dihujah untuk semakan kehakiman dan bahawa permohonan semakan kehakiman tersebut adalah remeh dan menyusahkan kerana ianya cuba untuk menyemak budi bicara PNM yang tidak boleh dicabar dibawah perkara 145(3) Perlembagaan Persekutuan. Mahkamah Tinggi memutuskan tiada sebarang keterangan untuk menunjukan bahawa PNM telah menyalahgunakan kuasa pendakwaannya atau bahawa keputusan untuk menuduh perayu melanggar apa-apa hak atau perlindungan dibawah perlembagaan. Dalam rayuan ini, perayu menghujahkan bahawa Mahkamah Tinggi sepatutnya membenarkan permohonan izinnya kerana dia telah memenuhi beban rendah untuk menunjukan bahawa dia mempunyai kes prima facie yang boleh dihujahkan yang tidak remeh dan menyusahkan dan dia menghadapi fakta yang dia akan dipertuduhkan secara tidak sah oleh responden.

Diputuskan, dengan sebulat suara membenarkan rayuan dan mengetepikan keputusan mahkamah tinggi:

(1) Berbeza dengan soalan sama ada PNM mempunya budi bicara mutlak

dalam perdakwaan jenayah, isu lain yang harus dihujahkan secara sepenuhnya adalah persoalan iaitu sama ada PNM sebagai kuasa negara adalah terikat dengan undang-undang oleh rejim hak dan kekebalan antarabangsa yang telah dijadikan sebagai sebahagian dengan undang-undang tempatan. Wujud dimensi antarabangsa kepada isu yang dibangkitkan oleh perayu dalam permohonan untuk izin ini dan bukan sahaja persoalan undang-undang tempatan yang sama ada PNM mempunyai kuasa mendakwa yang mutlak dan tidak boleh disangkal dibawah perkara 145(3) Perlembagaan Persekutuan (lihat perenggan 22 & 25).

(2) Tangkapan perayu adalah dengan niat untuk pendakwaan yang berkaitan dengan perkara yagn dilakukan dalam kapasitinya sebagai Pengarah (dan Pegawai Tinggi) AIAC. Persoalan yang perlu dihujahkan secara penuh sewaktu hujahan substantif adalah sama ada, sebagai pegawai tinggi, dia menikmati kelebihan yang sama sebagai seorang 'agen diplomatik' dalam maksud Diplomatic Priviledges (Vienna Convention) Act 1966. Relif yang dipohon bukan hanya perintah larangan tetapi juga perintah pengisytiharan yang penting (lihat perenggan 29–30).

(3) Adalah undang-undang mantap yang beban untuk mendapatkan izin semakan kehakiman adalah rendah. Izin harus diberikan dalam kes ini kerana kepentingan isu-isu yang dibangkitkan dalam permohonan perayu (lihat perenggan 30–31)]

Cases referred to

Association of Bank Officers, Peninsular Malaysia v Malayan Commercial Banks Association [1990] 3 MLJ 228; [1990]1 CLJ Rep 33, SC (refd)

Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617, HL (folld)

Johnson Tan Han Seng v PP; Soon Seng Sia Heng v PP; PP v Chea Soon Hoong; Teh Cheng Poh v PP [1977] 2 MLJ 66, FC (refd)

Law Society of Singapore v Tan Guat Neo Phyllis [2008] 2 SLR 239, HC (refd)

Long bin Samat & Ors v PP [1974] 2 MLJ 152, FC (refd)

Mohit v Director of Public Prosecutions of Mauritius [2006] 1 WLR 3343; [2006] UKPC 20, PC (refd)

Peguam Negara v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal [2019] 3 MLJ 443; [2019] 4 CLJ 561, FC (refd)

YAM Tunku Dato' Seri Nadzaruddin Ibni Tuanku Ja'afar v Datuk Bandar Kuala Lumpur [2003] 5 MLJ 128, HC (refd)

Legislation referred to

Diplomatic Privileges (Vienna Convention) Act 1966
Federal Constitution art 145(3)

International Organisations (Privileges and Immunities) Act 1992 Second Schedule, Part II
Rules of Court 2012 O 53 rr 2(4), 3

Appeal from: Judicial Review Application No WA-25–108–03 of 2019 (High Court, Kuala Lumpur)

K Shanmuga (Abdul Shukor Ahmad, Baljit Singh, Jagjit Singh, Akberdin Abdul Kader, Ankit Sanghvi and Dinesh Kumar with him) (Kanesalingam & Co) for the appellant.
Narkunavathy Sundareson (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

Abdul Rahman Sebli JCA (delivering judgment of the court):

[1] This appeal was against the decision of the Kuala Lumpur High Court dismissing the appellant's application for leave to file for judicial review.

[2] The facts are as follows. The appellant is a Malaysian citizen and a former Director of the Asian International Arbitration Centre ('AIAC') for the period from 1 March 2010 until 21 November 2018. The AIAC is located in Malaysia since 1978 pursuant to agreements between the Government of Malaysia and the Asian-African Legal Consultative Committee ('AALCO').

[3] On 20 November 2018, the appellant was arrested at the Kuala Lumpur International Airport by the Malaysian Anti Corruption Commission (the third respondent) and was detained overnight at the Commission's premises in Putrajaya.

[4] On 21 November 2018, the appellant was released after the third respondent's application to remand him was refused by the learned magistrate.

[5] The appellant was informed that the respondents had tried and continued to try to obtain a waiver of his immunity as former High Officer of the AIAC, particularly from the Secretary General of the AALCO. He was also informed by the third respondent that he would be charged in court for criminal offences.

[6] The appellant then filed for leave to commence judicial review proceedings against the respondents pursuant to O 53 r 3, Rules of Court 2012 ('the Rules'). The main reliefs that he sought for were the following:

(a) an order of certiorari to set aside any document purporting to waive his immunity as a former High Officer being the former Director of the AIAC;

A (b) an order of prohibition preventing the the attorney general (second respondent) from laying any charge or bringing any proceedings in any court in Malaysia against him with regard to anything done by him in his capacity as Director of the AIAC; and

B (c) an order of prohibition preventing the third respondent from arresting, detaining, issuing any warrant or other order or otherwise bringing any judicial proceedings whatsoever against him with regard to anything done by him in his capacity as Director of the AIAC.

C **[7]** Going by the reliefs sought, it is clear that the appellant's application for leave was not only to assert his immunity from criminal prosecution but also immunity from any suit or legal process taken by the respondents in respect of acts done in his capacity as Director of the AIAC.

D **[8]** At the conclusion of the leave hearing, the learned High Court judge found no prima facie arguable case for judicial review, and that the leave application was frivolous and vexatious, mainly because it sought to review the 'unfettered' discretion of the second respondent to institute criminal prosecution against the appellant.

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[9] Order 53 r 2(4) of the Rules provides that 'Any person who is adversely affected by the decision, action or omission in relation to the exercise of the public duty or function shall be entitled to make the application'. In arguing

F that leave should have been granted by the learned judge, learned counsel for the appellant contended as follows:

(a) the appellant is clearly a person who is adversely affected by the decisions, actions and omissions of the putative respondents, being the person facing an unlawful prosecution;

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(b) those decisions, actions or omissions undoubtedly relate to the exercise of the public duties or functions of the Minister, the Anti Corruption Commission and the attorney general as putative respondents; and

H (c) the appellant has met the very low threshold required of him at this preliminary stage to show that he has 'prima facie an arguable case' which is not frivolous and vexatious, and that there are 'grounds to consider the allegations made' by him at the substantive hearing for judicial review.

I **[10]** First, the question whether the appellant is immune from criminal prosecution in his capacity as former High Officer of the AIAC. The learned judge's view was that the decision of the attorney general in exercising his discretion to prefer charges against the appellant is not amenable to judicial review.

[11] For this proposition, the learned judge relied on the following observation by the Federal Court in *Peguam Negara v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal* [2019] 3 MLJ 443; [2019] 4 CLJ 561 at para 18:

> [18] The AG then appealed to the Court of Appeal against the decision of the High Court, but the same was dismissed. The Court of Appeal held that:
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> > [16] We fully agree with learned counsel for the respondent on this issue. In *Gouriet*, there was a proposed temporary union ban on communications to and from South Africa, which would have been criminal, and yet the attorney general had refused to sue or lend his name to a relator action, *Gouriet*, was concerned with the enforcement of the criminal law by way of an injunction in a civil suit. This is not the case with the instant appeal. The respondent herein did not file a suit to enforce the criminal law. His application was for a judicial review on the refusal of the attorney general to grant him consent to file a civil proceeding. Granted, it cannot be disputed that the attorney general has unfettered discretion in relation to prosecution of criminal based on art 145 of the Federal Constitution. However, there is no such unfettered discretion in a non-criminal matter like in the instant appeal.

[12] The observation was made *en passant* but the view that the learned judge took was that it was an acknowledgment by the Federal Court of the unfettered discretion of the attorney general in relation to the prosecution of criminal offences by virtue of art 145(3) of the Federal Constitution('the Constitution').

[13] The learned judge also referred to the Federal Court case of *Long bin Samat & Ors v Public Prosecutor* [1974] 2 MLJ 152 where Suffian LP in his judgment held as follows at p 158:

> On independence the Federal Constitution came into force, and cl (3) of its art 145 (as amended) provides:
>
> > The attorney general shall have power exercised at his discretion to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Muslim court, a native court or a court-martial.
>
> In our view, this clause from the supreme law clearly gives the attorney general very wide discretion over the control and direction of all criminal prosecutions. Not only may he institute and conduct any proceedings for an offence, he may also discontinue criminal proceedings that he has instituted, and the courts cannot compel him to institute any criminal proceedings which he does not wish to institute or to go on with criminal proceedings which he has decided to discontinue.

[14] The point was re-emphasised by the same court in *Johnson Tan Han Seng v Public Prosecutor; Soon Seng Sia Heng v Public Prosecutor; Public Prosecutor v Chea Soon Hoong; Teh Cheng Poh v Public Prosecutor* [1977] 2 MLJ

66 as follows:

> As noted by this court in *Long bin Samat v Public Prosecutor* there was ample judicial authority before *Merdeka* to show that the attorney general enjoyed wide discretion in regard to criminal prosecutions. As s 376(i) of the Criminal Procedure Code was already in existence before merdeka our constitution-maker could have been content with relying on it alone to preserve after *Merdeka* the attorney general's pre-*Merdeka* power, and if they had done so then it might be arguable that after merdeka it must be read subject to art 8; but our constitution-makers were not content to do so. They deliberately wrote art 145(3) into our constitution, which reads:
>
> The attorney general shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a native court or a court-martial.
>
> The language of this provision is very wide, for it includes the word 'discretion' which means liberty of deciding as one thinks fit.

[15] The Singapore courts seem to take a different view. In *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR 239 this is what the High Court said through Chan Sek Keong CJ:

> The discretionary power to prosecute under the Constitution is not absolute. It must be exercised in good faith for the purpose it is intended, ie, to convict and punish offenders, and not for an extraneous purpose. As the Court of Appeal said in *Chng Suan Tze v Minister of Home Affairs* [1988] SLR 132 at 156, [86], all legal powers, even a constitutional power, have legal limits. The notion of a subjective or unfettered discretion is contrary to the rule of law. In our view, the exercise of the prosecutorial discretion is subject to judicial review in two situations: first, where the prosecutorial power is abused, ie, where it is exercised in bad faith for an extraneous purpose, and second, where its exercise contravenes constitutional protections and rights (for example, a discriminatory prosecution which results in an accused being deprived of his right to equality under the law and the equal protection of the law under Art 12 of the Constitution.

[16] In dealing with this decision, the learned judge said that even if the Singapore position were to be followed, there was no material before him to show abuse by the attorney general of his prosecutorial power or that his decision to charge the applicant contravened any constitutional protection and rights.

[17] The decision in *Law Society of Singapore* is of course not binding on this court. It is only of persuasive value. Be that as it may, *Chin Chee Kow* provides some insight into the present judicial thinking on the justiciability of the attorney general's power of prosecution. The point is demonstrated by the following passages in the judgment delivered by Mohd Zawawi Salleh FCJ:

> [71] The decision of the case above would suggest that the decision in *Gouriet's* case

is no longer good law and that the basis upon which it was decided no longer prevail. The present position is the AG is no longer regarded as the sole guardian of what is public interest, which was a central principle of the decision in the *Gouriet's* case.

[72] It is interesting to note that in England private individuals may now properly seek judicial review of decisions of the public prosecutor whether or not to initiate criminal proceedings. This power does not exist at the time of the judgment in the *Gouriet's* case. In *R (B) v Director of Public Prosecutions (Equality and Human Rights Commission intervening)* [2009] EWHC 106 (Admin); [2009] 1 WLR 2072, it was held at p 52:

> The exercise of the Court's power of judicial review is less rare in the case of a decision not to prosecute than a decision to prosecute (because a decision not to prosecute is not final, subject to judicial review, whereas a decision to prosecute leaves the defendant free to challenge the prosecution's case in the usual way through the criminal court) but is still exceptional.

[73] The Courts in England have consistently held that private individuals may seek judicial review of decisions of the public prosecutor not only in matters of initiation or failure to take court proceedings or to discontinue police investigations, but additionally of decisions whether to take over or discontinue ongoing private investigations (see *R v DPP, Ex parte Duckenfield* [2000] 1 WLR 55 per Laws LJ at pp 67–68 and *R (on the application of Gujra) v Crown Prosecution Service* [2011] EWHC 472 (Admin); [2011] 2 Cr App Rep 130 at para 147)

...

[76] Singapore's courts have repeatedly affirmed that all powers are subject to legal limits. In *Chng Suan Tze v Minister for Home Affairs* [1988] 2 SLR (R) 525; [1988] SGCA 16, para 86; *Tan Seet Eng v Attorney-General* [2016] 1 SLR 779; [2015] SGCA 59, paras 1-2.), the courts held thus: 'under the law, the AG's discretionary power is not absolute and he must act according to law, as his prosecutorial power is subject to legal limits. Prosecutorial discretion cannot be exercised in bad faith, or in a manner contrary to the quality guaranteed under art 12 of the Constitution (See *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR 239; [2007] SGHC 207, para 148).

[18] Although made in passing, the observations represent a major shift away from the position taken by the Federal Court in *Long bin Samat* and *Johnson Tan Han Seng* . The Federal Court in *Chin Chee Kow* referred to and applied several authorities from various jurisdictions which in our view renders open the question whether the public prosecutor's power of prosecution is absolute and unfettered and thus not amenable to judicial review.

[19] In particular, reference was made by the Federal Court to the Privy Council case of *Mohit v Director of Public Prosecutions of Mauritius* [2006] 1 WLR 3343; [2006] UKPC 20, (25 April 2000) where the Privy Council held at p 3349:

> There is no doubt that the Director's decision to institute and undertake or take over

criminal proceedings against any suspect, to discontinue any such proceedings in any manner is an administrative decision and as such could be liable to be reviewed by the courts.

[20] The Privy Council went on to say at p 3350:

> Recognition of a right to challenge the DPP's decision does not involve the courts in substituting their own administrative decision for his: where grounds for challenging the DPP's decision are made out, it involves the courts in requiring the decision to be made again in (as the case may be) a lawful, proper and rational manner.

[21] Finally at p 3353:

> If the source of power is a statute, or subordinate legislation under a statute, then clearly the body in question will be subject to judicial review. It is unnecessary to discuss what exceptions there may be to this rule, which now represents the ordinary if not the invariable rule. Thus the Board should approach the present issue on the assumption that the powers conferred on the DPP by section 72(3) of the Constitution are subject to judicial review, whatever the standard of review may be, unless there is some compelling reason to infer that such an assumption is excluded.

[22] Quite apart from the question of whether the attorney general has absolute discretion in matters of criminal prosecution, the other issue that ought in our view to be fully ventilated at the substantive hearing is the question whether the attorney general as the state authority is bound in law by international regime of privileges and immunities which have been incorporated into and are part of our domestic law.

[23] We were referred by learned counsel to the International Organisations (Privileges and Immunities) Act 1992 (Act 485) which confers on the appellant the status of 'High Officer'. It was submitted that as High Officer, the appellant enjoyed the same privileges as a 'diplomatic agent' within the meaning of the Diplomatic Privileges (Vienna Convention) Act 1966 (Act 636).

[24] It was further submitted that as former High Officer, the appellant is conferred by law 'immunity from suit and other form of legal process in respect of acts and things done in his capacity as such officer' (see Act 485, Second Schedule, Part II).

[25] There is therefore an international law dimension to the issues raised by the appellant in his application for leave and not just the domestic law question of whether the attorney general has absolute and unfettered prosecutorial powers under art 145(3) of the Constitution. We were not referred to any authority by either side on the interplay between domestic law and

international law such as Act 485 and Act 636 in their application to the appellant as former 'High Officer'. A

[26] In *Association of Bank Officers, Peninsular Malaysia v Malayan Commercial Banks Association* [1990] 3 MLJ 228; [1990]1 CLJ Rep 33 the Supreme Court stated that when considering leave to apply for judicial review, the court should not go 'further than the leave stage and embarked on substantial issues of merit.' B

[27] The Supreme Court made it clear that this is 'not the right approach' at the leave stage, and that the guiding principle ought to be that the applicants must show prima facie that the application is not frivolous or vexatious and that there is some substance in the grounds supporting the application. C

[28] The principle was applied by Ramly Ali J (as he then was) in *YAM Tunku Dato' Seri Nadzaruddin Ibni Tuanku Ja'afar v Datuk Bandar Kuala Lumpur* [2003] 5 MLJ 128. This unfortunately was the approach taken by the learned judge in the present case. D

[29] There is no dispute that the appellant's arrest and subsequent prosecution were in connection with acts done in his capacity as Director (and High Officer) of the AIAC. The question that needs to be fully ventilated at the substantive hearing is whether as High Officer the appellant enjoyed the same privileges as a 'diplomatic agent' within the meaning of the Diplomatic Privileges (Vienna Convention) Act 1966 (Act 636). E F

[30] Further, the proposed relief was not merely for orders of prohibition but also for an important declaratory relief. We agree with learned counsel for the appellant that leave ought to have been granted because of the importance of the issues raised in the judicial review application. G

[31] The law is settled that the threshold for leave in a judicial review application is low. There is sufficient adjective law on the point. Suffice it if we refer to the Privy Council case of *Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 where Lord Diplock in his speech said at p 643: H

> The whole purpose of requiring that leave should first be obtained to make the application for judicial review would be defeated if the court were to go into the matter in any depth at that stage. If, on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration turn out to be an arguable case in favour of granting the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for that relief. I

A **[32]** Applying the principle to the facts and circumstances of the present case, we were of the view that the issues raised by the appellant might on further consideration turn out to be an arguable case in favour of granting the reliefs sought for by the appellant.

B **[33]** It was for all the reasons aforesaid that we allowed the appellant's appeal and set aside the decision of the High Court.

Appeal allowed unanimously and High Court's decision set aside.

C Reported by Ashok Kumar

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